16-563

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 126.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, APPELLANTS,

vs.

MORRIS K. JESUP, SURVIVING TRUSTEE, EUGENE KELLY, TRUSTEE, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED OCTOBER 27, 1879.

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INDEX.

	Original.	Print.
Petition pro interesse suo mayor and aldermen, Savannah	2	1
Acknowldgement of service	8	3
Order on petition	8	3
Order dismissing petition	9	4
Final decree in Jesup vs. Atlantic and Georgia Railroad Company	9	4
Application for allowance of appeal	36	13
Order granting appeal	37	13
Bond on appeal	38	13
Clerk's certificate	40	14

1 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the 5th circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on Monday, the fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, presiding, and the Hon. John Erskine, U. S. judge for Georgia.

MORRIS K. JESUP, SURVIVING TRUSTEE, &C., COMplainant, *and* THE ATLANTIC AND GULF RAILROAD CO., DEFENDant, *and* THE MAYOR AND ALDERMEN OF THE CITY OF SAvannah, intervenor pro interesse suo.	In equity. Bill of complaint.

Be it remembered that heretofore, to wit, on the tenth day of April, A. D. 1879, came the said The Mayor and Aldermen of the City of Savannah, and filed their petition pro interesse suo, in said cause, in the words and figures following, to wit:

2 *Petition.*

To the honorable the 5th circuit court of the United States for the southern district of Georgia:

The petition of The Mayor and Aldermen of the City of Savannah, a municipal corporation of said State, which avers itself to be a citizen of and residing in the said southern district of Georgia, intervening in the above-entitled cause pro interesse suo, respectfully shows that it is a creditor of the said The Atlantic and Gulf Railroad Company in this, to wit, that on the 20th day of January, A. D. 1877, under and by virtue of the authority in him vested by law, John R. Johnson, city treasurer of said city, issued an execution against said The Atlantic and Gulf Railroad Company for the sum of twenty-eight hundred and fifty-three dollars and seventy-five cents ($2,853.75), being the amount due from said railroad company to said city for taxes upon the real estate owned and used for its legitimate corporate purposes by said railroad company, within the corporate limits of said city, for the calendar year 1877, which execution was placed in the hands of the city marshal of said city to be levied on the goods and chat-

3 tels, lands and tenements of the said The Atlantic and Gulf Railroad Company. That on the 19th day of February, 1877, and before said execution had been levied by the order of this honorable court, upon proceedings in the above-entitled cause, the goods and chattels, lands and tenements, rights and franchises of said railroad company were placed in the possession, custody, and control of Samuel A. Strang and John Screven as receivers.

That on the first day of March, 1879, the said John R. Johnson, said city treasurer, under the power and authority vested by law in him, issued a certain other execution against the said The Atlantic and Gulf Railroad Company for the sum of thirty-seven hundred and twenty dollars ($3,720), being the amount due from said railroad company to said city for taxes upon the real estate owned and used for its legitimate corporate purposes by said railroad company, within the corporate limits of said city, for the calendar year 1878, which execution was also placed in the hands of the said city marshal of said city to be levied on the goods and chattels, lands and tenements of the said The Atlantic and Gulf Railroad Com-
4 pany, copies of both executions being hereto attached. That neither of said executions have been levied, and your petitioner is advised and believes that it cannot legally cause any of the property of said railroad company to be levied upon, the same being in the possession of said receivers, so appointed as aforesaid, unless the consent & order thereto of this honorable court be first given, and that it is powerless to enforce the payment of said taxes so justly due to it unless this court shall give to it the authority to sell said property, or so much of it as shall be sufficient to pay said taxes, or shall direct said receivers to pay said taxes out of the funds or property in their possession or control.

Wherefore, your petitioner prays that it may be heard in its own interest, and that this honorable court will authorise it to proceed to collect said taxes by levy and sale, under its ordinances and the laws of this State, or else order the said receivers to pay said taxes out of the funds & property in their possession, or give such other and immediate relief in the premises as to this honorable court shall seem meet.

5 And your petitioner will ever pray, &c.

WM. D. HARDEN,
Petitioner's Attorney.

Copies of executions.

GEORGIA, *City of Savannah:*

To the marshal of said city, greeting.

Whereas, under the provisions of an ordinance of the mayor and aldermen of the city of Savannah, passed on the 29th day of December, A. D. 1876, taxes were assessed against Atlantic & Gulf Railroad Company as a person holding taxable property within said city, and transacting, or offering to transact, business therein for the calendar year 1877; and whereas the said tax for the said calendar year ending on the thirty-first day of December, A. D. 1877, was twenty-eight hundred and fifty-three dollars, and the said Atlantic and Gulf Railroad Company has neglected to pay the same within the time specified by the said ordinance for the payment thereof, that is to say, within ten days from January 10th, 1877:

You are therefore hereby commanded that of the goods & chattels, lands and tenements of the said Atlantic and Gulf Railroad Com-
6 pany you cause to be made and levied the said sum of twenty-eight hundred and fifty-three $\frac{75}{100}$ dollars, with interest thereon from the day of , A. D. that being the last of the ten days

allowed for payment, and the costs which you may be legally entitled hereon; and that in so doing you proceed in the same manner as a sheriff does under executions issued out of the superior courts of this State, and this be your warrant.

Given under my hand and seal as treasurer of said city of Savannah this 20th day of January, A. D. 1877.

(S'g'd) JOHN R. JOHNSON. [SEAL.]

Copy execution.

STATE OF GEORGIA,
City of Savannah:

To the marshal of said city:

You are hereby commanded that of the goods and chattles, lands and tenements of Atlantic and Gulf Railroad Company you cause to be made and levied the sum of thirty-seven hundred and twenty dollars, being the amount of city taxes due from said Atlantic and Gulf Rail-
7 road Company to the mayor and aldermen of the city of Savannah, on real estate, for the year eighteen hundred and seventy-eight, under the tax and revenue ordinance passed December 26, 1877, and which taxes the said Atlantic and Gulf Railroad Company has refused and neglected to pay within the time specified by said ordinance for the payment thereof, and the further sum of for costs & charges thereon, and to sell the said personal and real property, or so much thereof as shall be sufficient to satisfy and pay the said taxes, with the costs & charges thereon, according to the rules governing judicial sales in this State, and make return thereof to me according to law, and for so doing this shall be your sufficient warrant. Herein fail not.

Given under my hand and seal as treasurer of said city of Savannah this 1st day of March, A. D. 1879.

(S'g'd) JNO. R. JOHNSON, [SEAL.]
City Treasurer.

8 *Service.*

Service acknowledged; copy and time of filing waived this 3rd April, 1879.

W. S. CHISHOLM,
Counsel for Compl't.
R. FALLIGANT,
Att'y A. & G. R. R. Co.

Filed April 10, 1879. Wm. M. Heyward, deputy clerk.

And afterwards, to wit, on the 12th day of April, A. D. 1879, the following proceedings were had:

Order on petition.

It is ordered that The Mayor & Aldermen of the City of Savannah, a municipal corporation, have leave to file its petition pro interesse suo in the above-entitled cause.

Be it so.

JOHN ERSKINE,
U. S. Judge.

On motion of Wm. D. Harden, sol'r for petitioner.

9 And afterwards, to wit, on the 6th day of June, A. D. 1879, the following proceedings were had, to wit:

Order dismissing petition, &c.

The intervening petition of The Mayor and Aldermen of the City of Savannah having been submitted on within briefs, after full consideration it is ordered and decreed that the same be, and it is hereby, dismissed.

JOSEPH P. BRADLEY, *C. J.*

And afterwards, to wit, on the 20th day of June, A. D. 1879, the following decree was filed, to wit:

Decree.

These causes came on to be further heard together upon the bills and answers in the above-stated causes and the various interventions filed in the same, and was argued by counsel; and thereupon, upon consideration thereof, on this 6th day of June, 1879, it was ordered, adjudged, and decreed as follows, to wit: First. It is adjudged and decreed by the court
10 that the defendant is a railroad corporation duly established under & by the laws of the State of Georgia, with its principal place of business in the city of Savannah, and the southern district of Georgia, and its property consists of the following described lines of railway, estate, and effects, to wit: Its main line running from its depot in the city of Savannah to Bainbridge, a distance of two hundred & thirty-seven (237) miles, more or less; a branch from said depot in the city of Savannah to the Savannah River, a distance of three (3) miles, more or less; a branch from Thomasville, on said main line, to Albany, formerly known as the South Georgia and Florida branch, a distance of fifty-eight (58) miles, more or less; a branch from Dupont, on the said main line, to Live Oak, in the State of Florida, a distance of forty-eight (48) miles, more or less; a branch connecting the said main line with the Savannah & Charleston Railroad, running four (4) miles, more or less, together with all side tracks connected with said main line and branches; also the wharves in the jurisdictional limits of the city of Savannah, known as the Atlantic and Gulf
11 Railroad wharves, fronting two thousand two hundred feet, more or less, on the Savannah River, and running back from said river a distance of feet, more or less; the depot grounds in the city of Savannah known as the Atlantic & Gulf Railroad depot, containing eighty-two and three-tenths (82.3) acres, more or less; the depot grounds of said company in Albany, the depot grounds of said company in Thomasville, the depot grounds of said company in Bainbridge, the depot grounds of said company at Live Oak in the State of Florida, and other depot grounds, lots, & parcels of land, & stations along the line of the said railway and branches, together with all & singular the buildings, structures, & improvements thereon, and the machinery, engines, cars, rolling stock, and materials of various kinds & descriptions, and the privileges, franchises, money, rents, issues, profits, tolls, income, & appurtenances of every kind & description thereto belonging or in any wise appertaining.

Second. It is further declared, adjudged, & decreed that all of said

lines & branches, wharves, depots, stations, ways, franchises, rolling stock, &c., equipments & appurtenances, constitute the Atlantic &
12 Gulf Railroad; that the whole is operated as an efficient and important line of mail, freight, and passenger transportation, & would be greatly & irreparably damaged by a dismemberment thereof, and must be sold as an entirety.

Third. It is further declared, adjudged, and decreed by the court that the following-named mortgages, made to secure the bonds therein described, on separate parts or portions of said railway and appurtenances, are good & valid mortgages, liens upon the property & estate covered by each respectively, and for the amounts herein decreed to be due upon each, respectively, to wit:

1st. The section of said main line, commencing at the termination of the old Savannah, Albany & Gulf Railroad, and running thence to Thomasville, is subject to a mortgage to Donald McDonald as trustee, made & executed on the first day of January, A. D. 1861, to secure an issue of five hundred thousand dollars ($500,000) of bonds, with interest payable semi-annually, and the principal payable in twenty years from date, and that of these bonds there are outstanding the sum of one hundred & fourteen thousand five hundred dollars ($114,500).

2nd. The section of the said main line from Savannah to Screven,
13 or station number seven (7), is subject to a mortgage made and executed on the first day of July, A. D. 1865, originally to John R. Gardner as trustee, but now held by Daniel G. Purse as substituted trustee in place of the said Gardner, since deceased, to secure an issue of five hundred thousand dollars of bonds, with interest payable semi-annually, and the principal on the first day of July, A. D. 1885, and that of these bonds there are still outstanding the sum of two hundred & fourteen thousand dollars principal.

3d. The section of the said main line from Thomasville to Bainbridge is subject to a mortgage made & executed on the first day of July, A. D. 1867, originally to John R. Gardner as trustee, but now held as substituted trustee in place of the said Gardner since deceased, to secure an issue of five hundred thousand dollars of bonds, with interest, payable semi-annually, and the principal payable on the first day of July, A. D. 1887; and of these bonds there are still outstanding the sum of seven thousand five hundred dollars principal.

4th. The section or branch from Thomasville to Albany, formerly known as The South Georgia and Florida Railroad, is subject to a first
14 mortgage made and executed on the fifteenth day of January, A. D. 1869, to George B. Carhart and Henry W. Ford as trustees, to secure an issue of four hundred and sixty-four thousand dollars of bonds of the said South Georgia & Florida Railroad Company, and endorsed by the governor of the State of Georgia, with interest thereon, payable on the first days of May and November of each year, and the principal payable thirty years from date. All of these said last-mentioned bonds are still outstanding.

And the said section or branch from Thomasville to Albany is also further subject to another mortgage, made and executed on the sixth day of September, A. D. 1869, to the said George B. Carhart and Henry W. Ford, as trustees, to secure an issue of two hundred thousand dollars of bonds of

the said South Georgia and Florida Railroad Company, with interest, payable on the first days of May and November of each year, and the *and the* principal in thirty years from date. All of these said last-named bonds are still outstanding.

5th. The section or branch known as the Junction Branch Rail-
15 road, connecting the said main line with the track of the Central Railroad and Banking Company, and with the track of the Savannah and Charleston Railroad Company, is subject to a mortgage made & executed on the first day of November, A. D. 1875, to James H. Johnston and Octavus Cohen as trustees, with interest at the rate of eight per cent. per annum, payable on the first days of May & November of each year, & the principal payable on the first day of November, A. D. 1881, unless sooner called in for liquidation, & of these bonds there are still outstanding the sum of forty-seven thousand five hundred dollars (47,500). There are no defaults in the payment of the interest of any of the aforesaid bonds; and the aforesaid mortgages are and shall remain good and valid incumbrances upon the property described in each respectively, notwithstanding the sale hereinafter decreed. And the receivers will continue, as heretofore, the payment of the interest coupons thereon, until relieved by the further order of this court.

Fourth. It is further declared, adjudged, & decreed by the court that the mortgage or deed of trust made & executed to Morris K. Jessup
16 and John R. Gardner, on the twentieth day of December, A. D. 1867, and now held by the said Morris K. Jessup as surviving trustee, to secure an issue of two million dollars ($2,000,000) of the bonds of the said Atlantic & Gulf Railroad Company payable on the first day of July, A. D. 1897, with interest payable on the first days of January & July of each year, which said bonds are fully set forth and described in the said bill of the said Morris K. Jessup, surviving trustee, is a good & valid mortgage or deed of trust covering all the property and estate therein mentioned, that is, of the entire estate, real, personal, & mixed, of the tolls, rights, income, franchise, & property of every kind and description acquired & to be acquired of the Atlantic & Gulf Railroad Company, including the said branch formerly known as the South Georgia & Florida Railroad and the said branch commonly known as the Junction Branch Railroad, connecting the main line of the said Atlantic & Gulf Railroad with the Savannah & Charleston Railroad; that of the said last-named bonds there are outstanding and in the hands of bone fide holders the sum of one million six hundred & sixty-six thousand dollars; that upon these last-named
17 bonds there are past due and unpaid the interest coupons payable January first, A. D. 1879, amounting to fifty-eight thousand three hundred & ten dollars, with interest thereon from that date, and that upon said bonds there will be due the further sum of fifty-eight thousand three hundred and ten dollars on the first day of July, A. D. 1879, which said sums will draw interest from that date. And that the said Morris K. Jessup, as surviving trustee as aforesaid, do recover the said sums, together with the interest thereon due & to be due as aforesaid, for the benefit of the holders of said coupons; that the said Morris K. Jessup, surviving trustee as aforesaid, and his successors in the said trust continue to hold the balance of said bonds, to wit, the amount of three hundred and thirty-four thousand dollars thereof, for the purpose of raising money to retire the said mortgage bonds of the various issues, amounting originally

to one million five hundred thousand dollars, and given upon different sections of the said railroad, and of which said sectional bonds there are now outstanding the sum of three hundred and thirty-six thousand
18 dollars, and continue to consolidate the mortgage indebtedness of the said defendant company, as provided in and by the said mortgage or deed of trust to the said Morris K. Jessup and John R. Gardner, trustees as aforesaid, and that the said mortgage or deed of trust last mentioned is and shall remain a good and valid mortgage or deed of trust, securing the payment of the said bonds & coupons as aforesaid, upon all the property which it has been hereinbefore decreed to cover, with all the powers, covenants, stipulations, and agreements in the same contained, notwithstanding the sale hereinafter decreed, except as to the January, 1879, and July, 1879, coupons upon the said one million six hundred and sixty-six thousand dollars of bonds, which said coupons, together with the interest thereon, are to be paid out of the proceeds of the sale hereinafter decreed.

Fifth. It is further declared, adjudged, and decreed that the said mortgage or deed of trust made and executed by the said Atlantic and Gulf Railroad Company, on the first day of January, A. D. 1872, to Eugene Kelly and Samuel A. Strang, as trustees, to secure an issue of
19 $1,500,000 of bonds, payable on the first day of January, A. D. 1892, with interest free from government tax, imposed or to be imposed, payable on the first days of January and July in each year, is a good & valid mortgage or deed of trust of the property therein mentioned; that is, upon all the constructed railroad of the said Atlantic and Gulf Railroad Company & branches, including the said branch from Thomasville to Albany, formerly known as the South Georgia and Florida Railroad, with the superstructure, tracks, viaducts, culverts, fences, depots, wharves, stations, ways, franchises, rolling stock, equipments, privileges, rents, issues, profits, tolls, income, and property of every kind appurtenant to said railway and branches; that of said issue of $1,500,000 of bonds there are outstanding & in the hands of bona fide purchasers, for value, the amount of $1,415,000; that on the first day of July, A. D. 1877, the said defendant failed to pay the interest coupons on said $1,415,000 bonds, which were due and payable on that day, amounting to the sum of $49,525, and made default therein, which default still continues; that the said defendant again, on the first days of January and July, A. D. 1878, and January, A. D. 1879,
20 respectively, failed to pay the interest coupons which were due and payable on said last-named bonds on those days, the default made on each of those days amounting to $49,525, which said default still continues; that there will be due on the interest coupons on said last-named bonds, which are payable on the first day of July, A. D. 1879, the further sum of $49,525. And that the said complainants Eugene Kelly and Samuel A. Strang, as trustees as aforesaid, recover of the said defendant, for the benefit of the holders of said $1,415,000 of bonds, the said principal of said bonds and the principal of said coupons, with interest on said coupons from the time when each is respectively payable. And it appearing from the amended answer of the defendant to the bill of said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, that the said defendant disclaim any knowledge as to the title of certain $8,000 of the said $1,415,000 of bonds, any party in interest may move the court to exclude

the said $8,000 of bonds, which are described in said amended answer, from participation in the proceeds of the sale hereinafter decreed,
21 and for such other order or decree concerning the said $8,000 of bonds as may be necessary in the premises.

That $85,000 of the said issue of $1,500,000 of bonds are held by Daniel G. Purse and Edward Lovell, as trustees, to keep and hold the said bonds as security to indemnify and make whole the holders of the "change bills" of said defendant outstanding on the fourth day of January, A. D. 1877, upon condition nevertheless that as any amount of said "change bills" might be cancelled from time to time, a like amount of said bonds should be also discharged from the trust aforesaid; that on the fourth day of January, A. D. 1877, there were outstanding of said "change bills" the sum of $89,000, and that since that date there have been cancelled of said "change bills" the sum of $73,856, leaving of said "change bills" now outstanding the sum of $15,414; that of said 85,000 of said bonds there must be cancelled the sum of $73,856, and that the remainder thereof, amounting to $12,500, together with the interest coupons thereon for July, 1877, January & July, 1878, and January & July, 1879, be retained by the said Daniel G. Purse and Edward Lovell, trustees as
22 aforesaid, as collateral security for such of the holders of said "change bills" as may intervene before the final decree to be rendered in these causes, and that the said Eugene Kelly and Samuel A. Strang, as trustees as aforesaid, recover for the use and benefit of said Daniel G. Purse and Edward Lovell, trustees as aforesaid, the sum of $15,414, to be paid to the holders of said "change bills" upon surrender of the same pro rata out of the share of the proceeds of the sale hereinafter decreed, to which the said $12,500 of bonds, and the aforesaid unpaid coupons thereon, now held as collateral security for the payment of said uncancelled "change bills," shall be entitled on a distribution of the proceeds of said sale.

Sixth. It is further declared, adjudged, and decreed that the said defendant is indebted to the State of Georgia for taxes, the following amounts, to wit:

For the year 1874, principal	.....	32,764	71
" " " 1875, "	.....	8,754	55
" " " 1876, "	.....	9,080	31
" " " 1877, "	.....	12,441	16
" " " 1878, "	.....	7,076	26
Aggregating	.....	70,116	99

23 and also the principal sum of such tax as may be assessed by the comptroller-general of the State of Georgia for the year 1879; that such taxes are prior to all other liens, except judicial costs; that neither penalty or interest is due on the taxes for any one of the aforesaid years; that the said principal sums due for the years 1874, 1875, 1876, 1877, and 1878, and the principal sum to be due for the year 1879, when the same shall be assessed by the comptroller-general, shall all be held out of the proceeds of the sale hereinafter decreed, subject to the demand of the State of Georgia.

Seventh. It is ordered, adjudged, and decreed that the defendant, The

Atlantic & Gulf Railroad Company, pay into the registry of the court, on or before the first day of August, A. D. 1879, the amount ascertained and hereinbefore declared to be due for principal and interest of said unpaid coupons, by the said defendant to the complainant, Morris K. Jessup, as surviving trustee under the trust-deed made to him and John R.
24 Gardner, now deceased, and also the amount hereinbefore decreed to be due for principal of the bonds and principal and interest of the aforesaid unpaid coupons by the said defendant to said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, together with the costs of court in these causes.

Eighth. It is further ordered, adjudged, and decreed, that in the event of such payment and redemption as above provided for on the part of the defendant, The Atlantic and Gulf Railroad Company, these causes stand continued with leave to the complainants, or either of them, to apply for appropriate relief in the event of any subsequent default in the payment of interest; and that in the mean time all proceedings therein be stayed.

Ninth. It is further ordered, adjudged, and decreed that all and singular the franchises and property of the said Atlantic and Gulf Railroad Company be sold (unless payment be made by the defendant as above provided), subject to the amount of the prior liens and incumbrances found to be due and stated in the 1st, 2nd, 3rd, & 4th paragraphs of this decree, as the same may exist at the time of sale, and as in
25 the said paragraphs of this decree provided, to wit, said property and franchise to be sold, subject to the sectional mortgages securing the payment of the bonds described in the 1st, 2nd, & 3d paragraphs, and to the mortgage or deed of trust made to Morris K. Jessup and John R. Gardner, as trustees as aforesaid, securing the payment of the bonds and coupons described in the 4th paragraph, except as to the January, 1879, and July, 1879, coupons on said bonds, together with the interest thereon, and the said property and franchises shall be sold under the said last-mentioned trust-deed in so far as the same secures the payment of said coupons and the interest thereon, and said coupons and interest shall be paid out of the proceeds of the sale, and subject also to all executory contracts made by the receivers under the authority of the court, which contracts, if any, must be publicly announced at the time of sale, and subject also to any liability that may be thereafter established against the receivers, growing out of any lawful acts done by them in their capa-
26 city of receivers, and such liabilities, if any, will remain a lien upon the premises until discharged, but subject to no other liens, claims, or encumbrances whatsoever. Such sale, unless stayed by payment as hereinbefore provided, shall be made by John Screven and Samuel A. Strang, the receivers appointed by the court, or by the survivor of them, the successor or successors of such survivor, at public auction, in front of the United States custom-house in the city of Savannah, southern district of Georgia aforesaid, on the fourth day of November, A. D. 1879, first giving notice of such time & place of sale by advertisement, published not less than three times a week for six weeks, in one or more newspapers in each of the cities of New York and Savannah.

The said receiver or receivers shall sell the premises herein directed to be sold to the highest and best bidder, and shall require such bidder before making an adjudication to him to pay in cash the sum of three hundred

thousand dollars, should said bid be equal to or greater than this sum, and if the sale is confirmed by the court, the balance of the purchase-money, if any, must be paid within thirty days after said confirmation, but the purchaser shall have the right to anticipate the day of pay-
27 ment. After the payment by the purchaser of such sum in cash as may be sufficient to pay the costs, charges, & expenses of the trust of the complainant Morris K. Jessup, surviving trustee as aforesaid, and of the trust of the complainants Eugene Kelly and Samuel A. Strang, trustees as aforesaid, and of these causes, the indebtedness of the receivers, such claims as the court declares to be prior liens to the lien of the said mortgage or deed of trust made to said Eugene Kelly and Samuel A. Strang, trustees as aforesaid, and orders to be paid out of the proceeds of the sale, and for the payment of the pro rata dividend out of the net proceeds of sale for distribution that may be due to other beneficiaries under the said last-mentioned trust-deed, the receivers may receive from the purchaser, in part payment of such purchase-money, the aforesaid bonds secured by said last-mentioned deed of trust, declared to be in the hands of bona fide pnrchasers for value, and such interest coupons thereon as may have become due and payable, at such rate per centum of the par value thereof as the purchaser would otherwise be entitled to be paid in cash in respect thereof out of the net proceeds on distribution thereof among the holders of such bonds and coupons, and the percentage
28 so applied in satisfaction of the purchase-money shall be treated as a payment of such bonds and coupons to the extent of such application.

If any question shall arise as to the proportion of the purchase-money that must be paid in cash and the proportion thereof that may be paid in bonds and coupons, application may be made to the court.

In case of the failure of any bidder to comply with the terms of sale that are to be complied with on the day of sale, and before a final adjudication to the bidder, the receivers may reject the bid and proceed at once, then and there, to make a resale, or they may then and there publicly announce, that on some other day, to be then designated, not more than ten days thereafter, and between certain hours of the day to be designated, they will at the same place make a sale of the premises under the decree without further advertisement, and they may make the same accordingly.

And said receivers are hereby authorized to employ any proper person to conduct such sale.

29 Tenth. It is further ordered, adjudged, and decreed, that the receivers report the sale and the proceedings under the decree to this court with all convenient speed, and give notice thereof to the complainants' solicitor, who may present the said report to this court, or to the judges thereof at chambers, on five days' notice to the purchaser and the defendant's solicitor. If on presentation and consideration of the said report of sale, the court, or the judges thereof at chambers, shall confirm the sale, the complainants' solicitor must forthwith prepare and submit to the court, or to the judges thereof at chambers, a draft deed of conveyance from the receivers to the purchaser, and upon the settlement of the form thereof, and upon due compliance with the terms of sale by the purchaser, the receivers must execute and deliver such deed of conveyance to the purchaser, and the purchaser or his successor or successors in interest will then

and thereupon be let into possession of the premises. The purchaser will also, and at the same time, be entitled to receive all books, maps, plans, papers, records, & documents of the defendant company, and of the
30 several sectional parts thereof and relating to all extensions or branch roads of said company, and of the receivers relating and appertaining to the franchise and property in question.

Eleventh. It is further ordered, adjudged, & decreed that by the sale & conveyance to be made as aforesaid of the property and franchises hereinbefore decreed to be sold by the said receivers, the defendant and all persons claiming under it shall be absolutely and forever barred and foreclosed of and from all estate, right, lien, claim, and equity of redemption, of, in, or to, or in respect of said property and franchise so sold and conveyed, and each and every part thereof.

Twelfth. It is further ordered, adjudged, and decreed that the receivers remain in possession of the mortgaged premises & continue to operate the said railroad after the sale and until the conveyance thereof. They will keep a correct account of the earnings and income of the premises accruing after the date of sale, and if the sale should be confirmed, the purchaser on delivery of possession by the receivers will be entitled to
31 receive the net income & earnings accruing subsequent to the date of sale and the proceeds of such income and earnings.

Thirteenth. It is further ordered, adjudged, and decreed, if the sale shall not be confirmed by the court, the amount of purchase money paid by the purchaser shall be refunded without deduction, unless the non-confirmation thereof shall be due to the fault of the purchaser, in which event such terms will be imposed as the court may think just and proper.

Fourteenth. It is further ordered, adjudged, & decreed that after the payment of the January, 1879, and July, 1879, coupons, on the bonds secured by the aforesaid trust deed or mortgage held by Morris K. Jessup, surviving trustee, as aforesaid, and the interest on such coupons, out of the proceeds of the sale, the said case of Morris K. Jessup, surviving trustee, against the said Atlantic and Gulf Railroad Company shall stand continued until the further order of this court.

Fifteenth. And whereas various persons have intervened for their
32 interest, claiming to have liens against the property of the Atlantic and Gulf Railroad Company, as laborers, mechanics, or material men, or claiming to have an equity to be paid out of the moneys in the hands of the receivers therein, before the payment of the said bonds secured by the said mortgages, and the said interventions having been heard & considered, it is further ordered, adjudged, and decreed that as to all claims of laborers and mechanics who have furnished labor or materials in and upon the said railroad and its appurtenances prior to the appointment of said receivers, which by the laws of Georgia entitle them to liens therefor, and who have taken the proper steps required by said laws to perfect said liens, by having the same recorded or otherwise verified within the time prescribed by law, such claims shall be, and are hereby declared to be, liens on the said property and the proceeds thereof superior to the said mortgage executed and given to Eugene Kelly and Samuel A. Strang, but not superior to the other mortgages herein mentioned; but the claims of those who have furnished material only, but not as laborers and mechanics, although entitled to liens therefor, shall be postponed to all the

said mortgages herein mentioned, and no allowance is made or to
33 be paid from the proceeds of said property, or from the money in the receiver's hands, to any other persons than to those who may have such liens as aforesaid, nor to the assignees of those claiming to have liens, unless the assignments were made after the liens were perfected respectively. And it is hereby referred to Rufus E. Lester, esquire, as a master in chancery, appointed for this purpose, to examine the said claims and report to this court with all convenient speed, such as are liens as aforesaid, the respective amounts due thereon, and their respective priorities according to the terms of this reference.

Sixteenth. It is further ordered, adjudged, and decreed that the proceeds of sale, together with the balance of money and assets which may remain, shall be distributed, as in the hands of the receivers, as follows; that is to say:

1st. To the payment of the costs and expenses of these causes, and of the execution of their trusts on the part of the complainants, respectively, and all such fees to counsel as may be hereafter allowed and directed to be paid, and of the indebtedness of the receivers ascertained and liquidated at the time of the said sale.

34 II. To the payment of the taxes hereinbefore decreed to be due to the State of Georgia.

III. To the payment of the coupons for January and July, 1879, and the interest to be due thereon, on the bonds secured by the mortgage or deed of trust now held by Morris K. Jessup as surviving trustee, as above provided.

IV. To the payment of such liens as may be decreed to be prior to the lien of the said mortgage or trust deed held by Eugene Kelly and Samuel A. Strang, trustees as aforesaid, and which have been herein decreed to be paid out of the proceeds of the sale.

V. To the payment of the bonds and coupons, with interest on such coupons, which have been hereinbefore decreed to be secured by the mortgage or deed of trust held by the said Eugene Kelley and Samuel A. Strang, trustees as aforesaid, in the manner hereinbefore provided, and in case the proceeds of such sale shall be insufficient to pay such bonds and coupons, together with interest on the coupons, the same must be paid, pro rata, and without preference. Any surplus which may remain
35 after distribution as aforesaid will remain subject to the further order of the court, and all questions touching such surplus and the distribution thereof are reserved.

Seventeenth. It is further ordered, adjudged, and decreed that all equities among the parties to these suits not disposed of or specially reserved in the foregoing decree, all questions of costs, expenses, and allowances, and fees of counsel, and all other questions not disposed of or specially reserved in the foregoing decree, but properly arising under the same, or as proper subjects for further direction, are reserved until after the sale and the report of the receiver of their proceedings thereon.

JOSEPH P. BRADLEY, *C. J.*
JOHN ERSKINE, *Judge.*

W. S. CHISHOLM,
Solicitor & Counsel for Compl'ts.

36 And afterwards, to wit, on the 6th day of June, A. D. 1879, the following proceedings were had, to wit:

Application for allowance of appeal.

M. K. JESSUP, TR., ET AL., COMPL'TS,
vs.
THE ATLANTIC AND GULF RAILROAD COMPANY, defendants, The Mayor and Aldermen of the City of Savannah, intervenors, claiming taxes for the years 1877 and 1878. } In equity.

This intervenor in the above stated case being dissatisfied with the decree therein rendered denying this intervenor's right to said taxes, and the amount involved, this intervenor's right to which is denied by said decree, is over five thousand dollars in value, this intervenor here makes application for the allowance of an appeal to the Supreme Court of the United States, and here tender an appeal bond for costs in the sum of one thousand dollars with the mayor and aldermen of the city of Savan-
37 nah and as bondsmen, and pray that said bond may be approved and said appeal allowed.

And this intervenor will ever pray, &c.

WM. D. HARDEN,
Sol'r for Compl'ts.

Order granting appeal.

It appearing to the court that the above-mentioned intervenor in the above stated case is dissatisfied with the decree therein rendered denying its claim for taxes for the years 1877 & 1878, and has made an application to the honorable Joseph P. Bradley, one of the justices of the Supreme Court who tried said cause, for the allowance of an appeal to the Supreme Court of the United States, and having tendered an appeal bond for costs with The Mayor and Aldermen of the City of Savannah, and as bondsmen in the sum of one thousand dollars, which is hereby approved, it is ordered that said appeal be allowed.

JOSEPH P. BRADLEY, *C. J.*

JUNE 6, 1879.

38 And afterwards, on the 6th day of June, A. D. 1879 the following bond was filed, to wit:

Bond on appeal.

Know all men by these presents that we, The Mayor and Aldermen of the City of Savannah, a municipal corporation under the laws of the State of Georgia, and Daniel G. Purse, of the city of Savannah and State of Georgia, are held and firmly bound unto Morris K. Jesup, as surviving trustee, and to Eugene Kelly, trustee, and , being the complainants in the above entitled causes, in the sum of one thousand dollars, to be paid to said obligees, their executors, administrators, and successors in the trust, to which payment, well and truly to be made, we bind

ourselves, and each of us, jointly and severally, and our successors, heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 6th day of June, A. D. 1879.

39 Whereas said The Mayor and Aldermen of The city of Savannah, intervenors as aforesaid in the above-named causes, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled causes by the United States circuit court for the southern district of Georgia, known as the fifth circuit court of the United States, refusing to allow the claim of said intervenors for said taxes for said years 1877 and 1878, and dismissing their petition: Now, therefore, the condition of this obligation is such that if the above-named intervenors shall prosecute their appeal aforesaid to effect, and answer all costs, including just damages for delay if they fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH,
By JOHN F. WHEATON, *Mayor.*

[SEAL.] Attest:
FRANK E. RETARER,
Clerk of Council.

D. G. PURSE, [L. S.]

Signed, sealed, and delivered in presence of—
JOHN A. GRAEF,
Not. Pub. C. C., Ga.

The above bond is hereby approved.

JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct., &c.

40 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, Willard P. Ward, clerk of the fifth circuit court of the United States for the southern district of Georgia, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals and a correct transcript therefrom, on file and remaining of record in my office, in the equity cause of Morris K. Jesup, surviving trustee &c., complainant, and the Atlantic and Gulf Rail Road Company, and The Mayor and Aldermen of the City of Savannah, intervenor in said cause, to wit, the petition pro interesse suo of The Mayor and Aldermen of the City of Savannah. Order allowing same to be filed. Order dismissing petition. Final decree in cause. Application for appeal. Order allowing appeal and appeal bond.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of Savannah, this 3d day of October, A. D. 1879, and of the Independence of the United States the 104th.

[SEAL.] WILLARD P. WARD,
Clerk.

(Indorsement on cover:) No. 126. The Mayor & Aldermen of the City of Savannah, appellant, vs. Morris K. Jesup, surviving trustee, Eugene Kelly, trustee. S. Georgia C. C. U. S. Filed 27th October, 1879.

16-563

SUPREME COURT U.S.
FILED
DEC 11 1882
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 126.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, APPELLANTS,

VS.

MORRIS K. JESUP, SURVIVING TRUSTEE, EUGENE KELLY, TRUSTEE, ETC.

BRIEF FOR APPELLANTS.

GEO. N. NICHOLS, Printer, Savannah, Ga.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH,
Appellants,

VS.

MORRIS K. JESUP, SURVIVING TRUSTEE, EUGENE KELLY, TRUSTEE, &C.

This case arose by an intervention *pro interesse suo* by the Mayor and Aldermen of the City of Savannah in the equity suit pending in the Circuit Court of the United States for the Southern District of Georgia, in which Morris K. Jesup, surviving trustee, *et al.*, were the Complainants, and the Atlantic & Gulf Railroad Company was Defendant. The petition of the Mayor and Aldermen of the City of Savannah showed that it was a creditor of said The Atlantic & Gulf Railroad Company in this, to-wit: that on the 20th day of January, A. D., 1877, that under and by virtue of the authority in him vested by law, the Treasurer of said city issued an execution against said Railroad Company for the sum of twenty-eight hundred and fifty-three dollars and seventy-five cents ($2853.75) being the amount due to said city for taxes upon the real estate of said Railroad Company within the corporate limits of said city for the year 1877, in conformity to the tax ordinance passed by said The Mayor and Aldermen of the City of Savannah; and in that to-wit: that on the 1st day of March, 1879, that under and by virtue of the authority vested in him by law, the Treasurer of said city issued a certain other exe-

cution against said Railroad Company for the sum of thirty-seven hundred and twenty dollars ($3,720), being the amount due to said city for taxes upon the real estate of said Railroad Company within the corporate limits of said city for the year 1878, in conformity with the tax ordinance passed by said The Mayor and Aldermen of the City of Savannah. That on the hearing of said petition it was ordered and decreed that the same be dismissed, and thus the prayer of the petition of the said intervenor was denied and refused. And said Appellant says that said Circuit Court erred in not decreeing that the taxes set out in said petition of said Appellant were due to it, and in not decreeing that the proceeds of the sale of the property of said Company, together with the balance of money and accounts in the hands of the Receiver, should be distributed to the payment of said taxes due said city next after the payment of the taxes decreed to be due to the State of Georgia, and before any of the other payments ordered and decreed to be made by said decree.

(Transcript of Record, page 12.)

The taxes intervened for by said Appellant were for taxes on real estate situated within the corporate limits of said City of Savannah, and were for the years 1877 and 1878.

Transcript of Record, pp. 2 and 3.
See copies of Execution.

The charter of the Mayor and Aldermen of the City of Savannah authorized it to make assessments and levy taxes on inhabitants of said city, and those who hold taxable property therein, which authority is contained in Code of Georgia, Section 4847.

Sec. 4847. "They are also hereby vested with full power and authority to make such assessments and lay such taxes on the inhabitants of said city, and those who hold taxable property within the same, and those who transact or offer to transact business therein, as said corporate authorities may deem expedient for the safety, benefit, convenience and advantage of said city, and may enforce the payment of such assessments and taxes in such manner as said Mayor and Aldermen may prescribe. Besides real and personal property,

the said Mayor and Aldermen may tax capital invested in said city, stocks in money, corporations, choses in action, income and commissions derived from the pursuit of any profession, faculty, trade or calling, dividends, bank, insurance, express and other agencies, and all other property or sources of profit not expressly prohibited or exempt by State law or competent authority of the United States."

The Mayor and Aldermen of Savannah, in conformity with the powers in its charter, assessed taxes for the years 1877 and 1878, and the executions for the payment of which the intervention was made, were issued against the Atlantic & Gulf Railroad Company, in conformity with the laws of Georgia. The questions then involved in this appeal are:

1st. Did the Charter of the City of Savannah authorize the assessment of taxes made on the real estate of the Atlantic & Gulf Railroad Company?

2nd. Was the real estate within the corporate limits of said city belonging to said company exempt by the charter of said company from taxation?

And in discussing the second inquiry we must inquire—

1. How the matter stood before the year 1877, before the Constitution of Georgia for 1877 went into effect.

2. How it stood after the Constitution of 1877 was adopted and went into effect.

The power and authority is "to make such assessment and lay such taxes on the inhabitants of said city and those who hold taxable property within the same," &c.

The next sentence in section of Code referred to begins—"Besides real and personal property, the said Mayor and Aldermen may tax," &c., containing the several parts of Section 4847 of the Code of Georgia together, it is plain that the "taxable property" referred to in first part of said section is "taxable, real and personal property."

"The power of taxation vested in the city authorities of Savannah is conferred by the Acts of 1787, 1805, 1825 and 1838: see 8 Georgia Reports, 23, and the Code, Section 4842. Taking all these together, we think it is pretty clear that the power exists to tax all private *real* estate within the corporate

limits if not expressly exempted," says the Supreme Court of Georgia in

The Mayor and Aldermen, &c, *vs.* LaRoche, 55 Ga., 309.

The Court does not say such real estate as was within the limits at the time these several acts were passed, but "all private real estate within the corporate limits not expressly exempted."

There is no question that the "real estate" on which the assessment and levy was made was "within the corporate limits" of said city. If so, then the burden is on the persons claiming the "express" exemption from taxation to show wherein the property is exempt.

The power to assess "taxable property" is to be construed with reference to the State law.

The Act of the General Assembly, approved Feb'y 28th, 1874, was as follows:

"An Act to amend the tax laws of the State so far as the same relate to railroad companies and to define the liabilities of said companies to taxation, and to repeal so much of the charters of such companies respectively as may conflict with the provisions of this Act.

"Section 1. The General Assembly do enact, That from and after the passage of this Act, the presidents of all the railroad companies in this State shall be required to return on oath, annually, to the Comptroller General the value of the property of their respective companies, without deducting their indebtedness; each class or species of property to be separately named and valued, so far as the same may be practicable, to be taxed as other property of the people of the State, and that said returns shall be made under the same regulations provided by law for the returns of officers of other incorporated companies which are required by law to be made to the Comptroller General.

"Sec. 2. Be it further enacted, That said presidents shall pay to the Comptroller General the taxes assessed upon the property of said railroad companies, and on failure to make the returns required by the preceding section, or on failure

to pay the taxes so assessed, the Comptroller General shall proceed to enforce the collection of the same, in the manner provided by law for the enforcement of taxes against incorporated companies hereinbefore mentioned.

"Sec. 3 provides for a means of resistance to the collection of the tax by the State by filing an affidavit of illegality.

"Sec. 4 repeals conflicting laws."

This Court held that this Act was a withdrawal on the part of the State of the exemption from taxation as theretofore enjoyed by said company, and that such withdrawal was lawful and not violative of the provisions of the Constitution of the United States.

Railroad Co. *vs.* Georgia, 98 U. S., 359 (365).

The Supreme Court of Georgia have held in a number of cases that where property became taxable under the laws of the State, that it forthwith became liable to taxation by municipal corporations possessing no greater powers than the City of Savannah.

In City Council of Augusta *vs.* the National Bank of Augusta, 47 Ga., 562.

The Court held that the City of Augusta, under a charter similar to that of the City of Savannah, had the power to levy and collect a tax upon all species of property within its corporate limits subject to taxation by the general laws of the State and "no special power or authority was required from the State to enable the city authorities to levy and collect all *legal* taxes upon the shares of the stockholders in the respective banks specified in the record," and this point was made specifically and pointedly in the bill filed by the banks.

Again in the case of Pearce, Wheless & Co., *vs.* The City Council of Augusta, 37th Ga., 597, The Supreme Court of Georgia says:

"By the Act of the General Assembly, passed in 1798, the City Council of Augusta are vested 'with full power and authority, to make such assessments on the inhabitants of Augusta, or those who hold *taxable property* within the same, for safety, benefit, convenience and advantage of the said

But the Defendant says that while it is true that the exemption is withdrawn as to the State, that no power is conferred upon the City of Savannah to tax the property of said Company by said Act.

The Act of 1874, heretofore set out, declared that property of all Railroad Companies should be returned "to be taxed as other property of the people of the State." Was not this a withdrawal of the exemption for all purposes of taxation, State, County and Municipal?

The title of the Act shows that the intention of the Legislature was clearly to amend the tax laws, and the body of the Act shows that the intention was that property of Railroad Companies should be taxed as other property in the State. No limitation is made. The taxation is not restricted to taxation "for State purposes." Instead of this, it is declared that the property is "to be taxed as other property in the State."

In the case of Baily *vs.* Maguire, 22 Wallace, 215, it was contended that under its charter the Pacific Railroad was exempt from all taxation except taxation by the State, and the words relied upon as exempting the property were as follows:

"The Pacific Railroad shall be exempt from taxation until the same shall be completed and in operation, and shall declare a dividend, *when it shall be subject to taxation at the rate assessed by the State on other property of like value.*"

The reasoning was that the property is first declared to be exempt from all taxation. This is to continue for a certain time, after which it is to be subject to a specified kind and amount of taxation, which precluded the idea of any other or greater taxation. The mode of assessment was pointed out in the charter; the returns were to be made to a particular officer, the taxes to be paid to a particular officer. No mention is made anywhere in the Act of any other taxation for county or other purposes, yet the Court held that the property was liable to be taxed by county and municipal authorities, and uses the following language:

"It is contended on the behalf of the Appellants that the twelfth section of the Act of 1852 provides for the whole subject of taxation of the road, that it exempts the road from all taxes except State taxes, and furnishes the only rule and

authority by which these taxes can be ascertained and collected.

"It is manifest that legislation which it is claimed relieves any species of property from its due proportion of the general burdens of government, should be so clear that there can be neither reasonable doubt nor controversy about its terms. The power to tax rests upon necessity, and is inherent in every sovereignty, and there can be no presumption in favor of its relinquishment. While it were better for the interest of the community that this power should on no occasion be surrendered, this Court has always held that the Legislature of a State, unrestrained by Constitutional limitation, has full control over the subject, and can make a contract with a corporation to exempt its property from taxation, either for perpetuity or for a limited period of time. If, however, on any fair construction of the legislation, there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the State. In other words, the language used must be of such a character as, fairly interpreted, leaves no room for controversy.

"Immunity from all taxation was given until the road was built and in operation two years, but after this it is declared 'that the road bed, &c., shall be subject to taxation at the rate assessed by the State on other real and personal property subject to taxation at the rate assessed by the State on other real and personal property of like value.' This is a declaration that the taxation imposed upon the property of this Company shall not be different from the taxation imposed upon other similar property which conforms to the constitional requirement, 'that all property subject to taxation shall be taxed in proportion to its value.' If other property is charged with the payment of county, school and municipal taxes, why not the property of this Company? In no other way can the principle of equality in taxation, so essential to good government, be secured. If the Legislature intended to apply a different rule in this case, it were easy to have said that the property of this Company shall be subject to taxation 'for State purposes.' Instead of this it is declared to be 'subject to taxation.' This obviously means general taxation—such

taxation as other property of like value is subjected to. No words of limitation are used, and none can be implied against the interest of the State. * * * * * *

'But it is said the section covers the whole subject of taxation, and as it provides for State taxes only, it excludes any other. If, in the declaratory part of it, the road had been subject to 'State taxation,' there would have been plausibility in the argument, to say the least, that the Legislators intended to waive other taxation. But the provision is that after the temporary exemption from all taxation ceases by its own limitation, the property of the road shall be subject 'to taxation' at the same rate as other property in the State. There is no restriction in the language, nor is there any rule of law by which a word can be imported to limit its meaning. It is true special provision is only made for the ascertainment and payment of a State law, and nothing is said about the manner of ascertaining and paying other taxes."

Now, then, apply these principles to this case, remembering that the Legislature had the right to withdraw the exemption from this Company contained in its charter, can there be any doubt as to what the State did by the Act of 1874?

The Act declared that all Railroad Companies should in future return the value of all property owned by them "to be taxed as other property of the people of the State." Not for State purposes alone, but for the purpose of being taxed, and while the Act only provided machinery for the ascertainment and payment of a State tax, and nothing is said about any other taxes, can there be any doubt but that the property became from the time of the passage of that Act "taxable property" and such taxable property as the said City was authorized by its Charter to tax under the terms "and those who held *taxable property* within the same."

This Court has always declared that the language in which a surrender of the right of taxation is made must be clear and unmistakable. The enactments must distinctly state that there shall be no other or further liability to taxation.

The contention then of the defendant is that it is exempt because under its Act of Incorporation it had "the several immunities, franchises and privileges granted to the (said) Savannah, Albany & Gulf Railroad Company and the Atlan-

tic & Gulf Railroad Company by their original Charters and the Amendments thereof and the liabilities therein imposed shall continue in force except so far as they may be inconsistent with this act of consolidation."

Act 1863, approved April 18.

There are no words in this Act referring directly or indirectly to taxes or exemptions from taxes other than those above quoted, which are in third section of said Act. Now under a grant of "immunities, franchises and privileges" does this Company take an exemption from taxation enjoyed by either or both of Companies consolidated? Does it not admit of question, is it not doubtful whether the legislature ever intended to grant this new company on exemption from taxation? The Acts referred clearly to State taxation and a claim of exemption from municipal taxation could only be based on the principle that the State exempting the property from taxation all branches of the State government (county and municipal) were inhibited from taxing; if this be so, does it not necessarily follow that when the State withdraws this exemption that all branches of the State government, including municipal coporations (whose charters are broad enough), are at once relieved from the inhibition produced by the State's exemption. The Charter of this City was clearly broad enough to embrace all "taxable property" within said city. The tax was laid upon the real estate of the Company in the corporate limits of said City.

This Court says in case of Central Railroad Company *vs.* Georgia, 92 U. S, 674:

"But it is a well settled principle that a claim for exemption from taxation cannot be supported, unless the Statute alleged to confer it is so plain as to leave no room for controversy. No presumption can be made in support of the exemption; and, if there be a reasonable doubt, it must be resolved in favor of the State."

Does not the same principle apply when we construe charters in reference to municipal taxation? Is this Company to be exempt from taxation by the City when its "exemption" has been withdrawn.

II.

The taxes for the year 1877 and the year 1878 stand upon a somewhat different footing.

The Constitution of Georgia, which went into effect December 21st, 1877, provided as follows in reference to taxation in Article VII., Section II.:

"Paragraph I. *Must be uniform, etc.—Dogs.* All taxation shall be uniform upon the same class of subjects and *ad valorum* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. * * *

"Paragraph II. *Exemptions.* The General Assembly may by law exempt from taxation all public property, places of religious worship, or burial; all institutions of purely public charity; all buildings erected for and used as a college, incorporated academy or other seminary of learning; the real and personal estate of any public library, and that of any other association used by or connected with each library; all books and philosophical apparatus; and all paintings and statuary of any company or association kept in a public hall, and not held as merchandise or for purposes of sale and gain: *Provided*, the property so exempted be not used for purposes of private or corporate profit or income."

"Paragraph IV. *Laws exempting property.—Void.* All laws exempting property from taxation, other than the property herein enumerated, shall be void."

"Paragraph V. *Tax on Corporations.* The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party."

We have quoted these paragraphs to show how the Constitution of 1877 deals with the subject of taxation. Can it be doubted that exemptions from taxation was taken away from all corporations who had exemptions which were revocable? This Company had an exemption which was held to be revocable by the State, and we contended that the Constitution of 1877 revoked this exemption and left this Company opened to be taxed by the State, or by any municipal corporation, the Charter of which was broad enough to reach its property. The property taxed by this City was clearly "taxable property" within its limits and as such taxable under its Charter as has been heretofore set out.

A. R. LAWTON & CUNNINGHAM,
Solicitors for Appellants.

16563

SUPREME COURT U.S.
FILED
DEC 11 1882
JAMES H. MCKENNEY

SUPREME COURT OF THE UNITED STATES.

No. 126.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, APPELLANTS,

vs.

MORRIS K. JESUP, SURVIVING TRUSTEE, EUGENE KELLY, TRUSTEE, ETC.

BRIEF FOR APPELLEES.

GEO. N. NICHOLS, Printer, Savannah, Ga.

No. 126.

IN THE SUPREME COURT OF THE UNITED STATES.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH,

APPELLANTS,

vs.

MORRIS K. JESUP, SURVIVING TRUSTEE, EUGENE KELLY, TRUSTEE, *et al.*

Morris K. Jesup, as surviving Trustee under a first mortgage, and Eugene Kelly and Samuel A. Strang, as Trustees under a second mortgage, made and executed by the Atlantic and Gulf Railroad Company, had filed, in the Fifth Circuit Court of the United States for the Southern District of Georgia, separate bills for the foreclosure of the respective mortgages and for the appointment of Receivers. The two cases had been consolidated, Receivers had been appointed, and the cause was proceeding according to the usual practice.

Before final decree, an intervention *pro interesse suo*, was filed in the cause by the Mayor and Aldermen of the City of Savannah, claiming a lien on the property of the Atlantic and Gulf Railroad Company for taxes due the Municipal Corporation upon real estate owned and used for the the Company's legitimate corporate purposes, for the years 1877 and 1878, and for the collection of which executions had been issued directed to the Marshal of said city, commanding him that of the goods and chattels, lands and tenements of the Atlantic and Gulf Railroad Company, he should cause to be made and levied for the calendar year ending on the 31st day of December, 1877, the sum of $\$2.853\frac{75}{100}$, and for the calendar year 1878 the sum of $3.720.

The petitioner prayed that the Court would authorize it to pro ceed to collect said taxes by levy and sale, under its ordinances and the laws of the State, or else order the Receivers to pay said tsxes out of the funds and property in their possession, or give such other and immediate relief in the premises as to the Court might seem meet.

On the 12th day of April, 1879, leave was granted to file the petition, and afterwards, on the 6th day of June, 1879, the following decretal order was passed:

"The intervening petition of the Mayor and Aldermen of the City of Savannah having been submitted on within briefs, after full consideration, it is ordered and decreed that the same be and hereby is dismissed."

The opinion of the Court in the case is reported in 3d Woods, pp. 433, 444, and is as follows:

"The claim in this case is based on two grounds:

1. The Act of 1874, subjecting the Company to taxation as other citizens, has abolished the exemption granted by the Company's charter, and has made its property taxable in all places.

2. That the Constitbtion of 1877 has abolished all laws exempting property from taxation, except certain enumerated classes of property held for benevolent and public purposes, and, therefore, the property of the Company is, at all events liable to be taxed since 1877.

The first ground is clearly untenable. The Act of 1874 did nothing more than declare that all railroad companies should annually return the value of their property to the Comptroller General to be taxed as other property of the people of the State, and that they should pay him the taxes assessed upon such property. This law clearly gives no authority to local and municipal bodies to tax the Companies also. It might as well be said that because I authorize one man to pick cherries off my trees, therefore everybody has a right to do it. Taxation can only be imposed by law, and when the law prescribes how it is to be imposed, no one else has a right to exact it differently. The second ground is no more teuable than the first. The Constitution of 1877, it is true, says, that "all laws exempting from taxation other than the property herein enumerated shall be void." If this clause relates to past as well as future laws, still its only effect is to abolish exemptions, and to leave the Legislature free to tax all kinds of property. But until the Legislature imposes a tax, no tax can be collected, and when it imposes only a particular tax, that alone can be collected.

Now, as we have seen, the Legislature has imposed a particular tax, and none other, on Railroad Companies, and has made the tax payable to the Comptroller General and not to the county or municipal authorities. The result is that these authorities have acquired no right to tax the property of the Companies. This seems to us very obvious, and requires no further discussion.

The application is denied."

On the 6th day of June, 1879, before the final decree in said cause had been filed, the Mayor and Aldermen petitioned for the allowance of an appeal from the decretal order, dismissing their intervention, which was allowed and bond given on the same day.

There are no assignments of error, either in the record or the brief.

POINTS AND AUTHORITIES.

I.

Prior to February 28th, 1874, the property of the Atlantic & Gulf Railroad Company was exempted from taxation.

No higher tax than one-half of 1 per cent. upon the Company's annual net income, or the net proceeds of its investments could have been assessed and levied by the State.

Railroad Co. *vs.* Georgia, 98 U. S., pp. 359, 360, 361.

The Atlantic & Gulf Railroad Company had all the rights, privileges and franchises and immunities which were possessed by the Georgia Railroad, but by accepting a new charter in April, 1863, these rights, privileges, franchises and immunities were subject to withdrawal, modification or repeal by the Legislature. One of these immunities was exemption of its property from taxation by municipalities.

The City of Augusta was "vested with full power and authority to make such assessment on the inhabitants of Augusta or those who hold *taxable property*, within the same, for the safety, benefit, convenience and advantage of said city as shall appear to them expedient."

Under this ample power, it was held that the City Council of Augusta could not impose a tax on the banking capital of the Georgia Railroad and its real estate in their corporate limits.

City Council of Augusta *vs.* The Georgia Railroad, etc. Co., 26 Ga., p. 651.

To the same effect.

The Rome Railroad *vs.* The Mayor and Council of Rome, 14 Ga., p. 275.

Georgia *vs.* Georgia Railroad, 54 Ga., p. 423.

Under the charter the net income was "taxable property," but after the State had levied and collected its half per cent. it was not competent for the city to have assessed and levied another tax on the same income. It was to be subject to a tax *not* exceeding one-half of one per cent. per annum. The facts show that it has never been the policy of the State of Georgia to permit the property of

railroad companies created by the State for the benefit of the people at large to be taxed by her subordinates, county and municipal governments, for local purposes. Whenever this policy was changed it has been by a special enactment.

The following Act illustrates this view:

An Act to authorize and empower the Mayor and Aldermen of the City of Savannah to tax the property of the Savanaah, Florida and Western Railway Company, within the jurisdictional limits of lhe City of Savannah.

SECTION 1. *Be it enacted bv the General Assembly of the State of Georgia,* That the Mayor and Aldermen of the City of Savannah be, and they are hereby authorized and empowered to tax any property. real, personal or mixed, of the Savannah, Florida and Western Railway Company, within the jurisdictional limits of said city, in the same manner as like property of other railroads in said city is taxed; *provided,* that real property of the said Company shall be so taxed only when the plan of the city is *bona fide* extended over it.

SEC. II. That all laws and parts of laws conflicting with this Act be, and the same are hereby repealed, in so far as they conflict."

Approved September 30th, 1881.

Georgia Laws, 1880-1, p. 397.

When the city has bona fide extended the plan of the municipality over the *real estate* of the Company, after she has done something more than the State at large has done, she is permitted to tax. The Superior Court of the County of Chatham in the case of Waring *vs.* the Mayor and Aldermen of Savannah, from which decision there was no appeal, decided that extending the plan, meant opening and maintaining, at the city's expense, the streets and lanes as laid down on the city map over the real estate to be taxed.

(Case not reported.)

This is not special legislation in favor of a railroad. The proviso is but the announcement of the general law controlling taxation by the municipal corporation of Savannah, which is as follows:

Code (1873) § 4842. All persons residing within said defined limits shall be entitled to the privileges of citizenship under the same conditions and restrictions as the residents of the wards already laid out, and all persons and property within the said defined limits shall be subject to and bound by all the ordinances and regulations of the Mayor and Aldermen of said city, now of force and hereafter to be ordained and established with this *proviso, nevertheless,* that the said corporate authorities shall have *no* power to tax any of the lands, or other property within said defined limits, not now liable to taxation except where the plan of the city is now or shall hereafter be regularly and *bona fide* extended over such limits.

This Section in the Code of 1873 is a copy of Section 4751 in the Code which went into effect January 1, 1863, and is also now the law.

There can be no doubt then, that the real estate of the Company was exempt from municipal taxation in 1863, and if so the foregoing proviso still applies to it.

II.

The Act of 1874, however, did not subject to municipal taxation, the real estate of the Company, used for, *legitimate corporate purposes*, even if the same was within the terms of said proviso.

That Act is as follows:

An Act to amend the tax laws of this State, so far as the same relate to Railroad Companies, and to define the liability of such companies to taxation, and to repeal so much of the Charters of such companies respectively as may conflict with the provisions of this Act.

§ 26. SECTION I. *The General Assembly do enact*, That, from and after the passage of this Act, the Presidents of all the railroad companies in this State shall be required to return, on oath, annually, to the Comptroller General, the value of the property of their respective companies, without deducting their indebtedness; each class or species of property to be separately named and valued, so far as the same may be practicable, to be taxed as other property of the people of the State, and that said returns shall be made under the same regulations, provided by law for the returns of officers of other incorporated companies which are required by law to be made to the Comptroller General.

§ 27. SEC. II. *Be it further enacted*, That said Presidents shall pay to the Comptroller General, the taxes assessed upon the property of said railroad companies, and on failure to make the returns required by the preceding section, or on failure to pay the taxes so assessed, the Comptroller General shall proceed to enforce the collection of the same, in the manner provided by law for the enforcement of taxes against the other incorporated companies hereinbefore mentioned.

§ 28. SEC. III. *Be it further enacted*, That if any railroad company affected by the first and second sections of this Act desires to resist the collection of the tax herein provided for, said company through its proper officer, may, after making the return required in the first section in this Act, and after paying the tax levied on such corporation by the tax Act for 1873 and continuing to pay the same while the question of its liability under this Act is undetermined, resist the collection of the tax herein provided for by filing an affidavit of illegality to the execution or other process issued by the Comptroller General aforesaid, and stating fully and distinctly the grounds of resistance, which shall be returnable to the Superior Court of Fulton County, to be there determined as other illegalities, only the same shall have precedence of all cases in said Court as to time of hearing, and with the same right of motions for new trial and writs of error as in other cases of illegality on the part of the Comptroller General and of said corporation in which cases the

Comptroller General shall be represented by the Attorney General of the State or such other attorney as the Governor may select, and if the grounds of such illegality be not sustained, the Comptroller General shall, after crediting the process aforesaid with amount paid, proceed to collect the residue due under the provisions of the Act, and if at any time during the pendency of any litigation herein provided for, the said corporation shall fail to pay the tax required to be paid as a condition of hearing, then said illegality must be dismissed and no second affidavit of illegality shall be allowed. Said illegality may be amended as other affidavits of illegality, and shall always be accompanied by good bond and security for the payment of the tax *fi. fa.* issued by the Comptroller General.

Section IV. Repeals conflicting laws, approved February 28th, 1874.

Acts of 1874, pp. 107 and 108.

The preamble of this Act declares that its object is "to define the liability of such Company to taxation."

The primary meaning of the word "define" is "to fix the limits of; to set bounds to; to limit."

Worcester's Dictionary, "Define."

This liability is defined to be a tax to be assessed by the *Comptroller General* upon the basis of taxation of other property of people of the State upon return made by the Presidents to that officer, etc.

The second section provides for the payment to the *Comptroller General* of the entire tax authorized by the Act. And the third section furnishes a means of contesting the validity of the tax "*herein provided for*." The whole scope of the Act was to repeal the special exemption from taxation theretofore enjoyed by certain railroad companies only for the purpose of allowing the State to tax their property. As the preamble states, their charters are repealed in so far as they conflict "with the provisions of this Act," such provisions allowing only State taxation and leaving the charters of full force in all other particulars; and as we have already shown, these railroad companies were exempt from municipal taxation before the passage of this Act.

The property of the State for general taxation is returned to the Receiver of Tax Returns in each County and not to the Comptroller General:

"All other companies or persons taxed shall make their returns to the Receiver of the respective counties where the persons reside or the office of the company is located, except in cases of mining companies and of persons who cultivate lands in counties not their residence."

Code of Georgia (1873) § 823.

County taxes are assessed only on the property returned for taxation to the Receivers of Tax Returns:

"All taxes so levied for county purposes must be assessed upon the Tax Receiver's books for each year," etc.

Code of Georgia (1873) § 553.

And where a tax is to be paid directly to the State Treasurer, the property so taxed cannot be assessed for county purposes.

LUMPKIN, J., delivering the opinion of the Court in the case of Cherokee Insurance and Banking Company *vs.* Justices of Whitfield County (28 Ga., Repts., p. 122), says: "This and all other banks pay to the State a heavy tax upon their capital; yet it is to be paid directly to the Treasurer without the intervention of county officers. No mode has been prescribed for levying and collecting such a tax by the county; and until the Legislature see fit to speak out plainly upon the subject, we are unwilling to sanction the exercise of so doubtful a power, to say the least of it."

The exemption from taxation is clearly granted by the charter of the Atlantic and Gulf Railroad Company; that exemption has been withdrawn by the Act of 1874 only so far as the State of Georgia is concerned, but the State has never seen fit to withdraw that exemption so far as cities and counties are concerned, and until it does see fit so to do the Company is exempt under its charter from taxation by cities and counties.

The Appellant relies on the case of the City Council of Augusta *vs.* The National Bank of Augusta, 47 Georgia Reports, p. 562. In that case the following language is used: "The City Council of Augusta have unquestionably the general power and authority, as has been repeatedly ruled by this Court, to levy and collect a tax upon all species of property within its corporate limits subject to taxation by the *general laws* of the State."

The Legislature, however, had not subjected the real estate of the Atlantic and Gulf Railroad Company to taxation by any one of her general laws on taxation.

The Act of 1874 and the amendments thereof were applicable to railroads only. Prior to its enactment the property of railroads had not been taxed. The State levied a tax of one-half per cent. upon the net annual income of each. In some of the charters this tax could not be increased without violating their contracts. No authority had ever been granted to the Appellant to tax the real estate of this Railroad Company, nor had any such power or authority ever been claimed or exercised. By the Act of 1874 and its Amendments the policy was changed.

The value of the property of the railroads was required to be returned to the Comptroller General to be taxed as other property of the *people of the State.* This conferred power to levy a State tax alone. A tax in which the entire people of the State were interested. It conferred no power to levy either county or municipal taxes.

A citizen of Fulton county is not taxed like a citizen of Chatham county for county purposes, nor is a citizen of Savannah taxed like a citizen of Atlanta for municipal purposes.

The general tax law for 1874 will be found in the Acts of that year, page 101, and does not tax the property of railroads.

The Act of 1874 repealing the charters of the railroads claiming exemptions has never been treated by the Courts as a general statute. If so, they must have held that it did not repeal the exemptions from taxation contained in the particular statutes chartering the respective railroad companies.

"It is a well established rule of construction, that a later statute which is general, does not repeal a former one that is particular."

Haywood *vs.* Mayor and Aldermen, 12 Ga., 409.

The Appellant has quoted at length from the case of Bailey *vs.* Maguire, 22 Wall, 215.

In that case the Company had been exempt from all taxation for a certain time, which had expired, the Act declared that when the exemption should have expired, "it shall be subject to taxation at the rate assessed by the State on other property of like value."

The Company sought exemption from municipal taxation by implication. It contended in substance that as provision had been made for a State tax only it was exempt from all others.

The exemption had expired and the Court held substantially that all exemptions must be expressed and not implied, and that the provision for the State tax after the exemption proved "nothing more than that the Legislature thought proper, in the particular of State taxes to modify the general revenue law so far as this corporation is concerned, leaving the provisions of this general law operative upon local taxation."

But in this case the real estate of the Company had been exempt from all taxation prior to the 28th day of February, 1874. The exemption was express. The Legislature on the 28th February, 1874, by a particular statute withdrew that exemption to the extent of subjecting the property of the Railroad Company to a tax to be assessed by and paid to the Comptroller General of the State. So far as this real estate was concerned there were no "provisions of any general law operative upon local taxation."

III.

The Constitution of 1877 did not subject this real estate to taxation.

Paragraph IV, Section II, Article VII of the Constition of Georgia of 1877, provides that "all laws exempting property from taxation other than the property herein enumerated, *shall be* void."

This constitutional provision clearly refers to laws to be thereafter enacted, and does not repeal exemptions granted before its adoption.

"*Future operation of laws.* Laws prescribe only for the future; they cannot impair the obligation of contracts, nor generally have

a retrospective operation. Laws looking only to the remedy or mode of trial may apply to contracts, rights and offenses entered into, or accrued, or committed, prior to their passage," etc.

Code of Georgia (1873) § 6.

And this principle, that laws are not to have a retrospective operation, is applicable not only to statutory enactments, but also to State Constitutions.

"Being a rule of construction, it may be applied to every conceivable expression of the will of the law making power, where there is a doubt as to whether it was intended to take effect prospectively or retrospectively."

Wade on Retroactive Laws, § 37.

The language of this section of the Constitution shows that it was only to have a future operation; it says, laws exempting property from taxation "*shall be void.*"

The Legislature which met after the adoption of the said Constitution, re-enacted the provisions of the said Act of 1874 as to taxation of railroads.

Georgia Laws, 1879, p. 24, § 11.

This last Act would have been unnecessary if the said section of the Constitution had repealed the charter of all railroad companies, subject to repeal, as well as all tax laws of the State concerning them. It may be regarded as a legislative interpretation of the Constitution on this point.

In the case of The Mayor, &c., Savannah *vs.* Hartridge, which involved the right of the municipal corporation to tax income, the Supreme Court of Georgia announced certain general principles as being applicable to the powers of taxation which had been granted to the local government. The Court held that:

"The history of the legislation of the State, in reference to a particular subject matter of taxation may be referred to as tending to aid in the construction to be given to the statute."

"In the construction of statutes made in favor of corporations or particular persons, and in derogation of common right, care should be taken not to extend them beyond their direct terms or their clear import."

"In laws imposing taxes, if there be a real doubt, whether the intention of the Act was to levy the tax, that doubt should absolve the tax-payer."

"Retrospective statutes are forbidden by the first principles of justice."

8th Georgia, pp. 23 and 24.

Dill on Mun Corp § 796

If the Court should be of the opinion that the Constitution of 1877 repealed the exemptions in all *private charters* and that the execution for 1877 should not have been paid, but that the taxes assessed for 1878 ought to have been decreed to the intervenor; it is submitted that the amount of that tax is less than Five Thousand Dollars and the Appeal should be dismissed.

IV.

BURDEN OF PROOF.

The burden of proof in this case is upon the Appellant to show that the real estate of the Company upon which this tax is claimed is in fact "taxable property" not "specially exempted" as defined in the Code, § 799, and that the plan of the City of Savannah has been regularly and bona fide extended over it, as provided in Code, § 4842.

In the matter of Second Avenue M. E. Church the Court of Appeals for the State of New York said:

"It is a rule that the municipality, which seeks to effect the property within its jurisdiction by taxation or proceeding in the nature thereof, must produce express power therefor in legislative enactment and must show in its attempt to tax it has strictly followed all the legal requirements. It seems then that the substantial affirmative is upon the city." * * * * "It is a power given with a proviso annexed. The demand of the proviso must be answered as a pre-requisite to a legitimate exercise of the power." * * * * "A proviso in a grant or enactment is something taken back from the power first declared. The grant or enactment is to be read not as if the larger power was ever given, but as if no more was ever given than is contained within the terms or bounds of the proviso."

66 New York, pp. 398 and 399.

2d Arrigna v. [illegible] Council of Augusta
31 Ga 709-710-7

The proofs submitted show incontestably that the Appellant failed on both points.

First, The Acts relied on establish that the franchise or immunity from municipal taxation on the real estate "owned and used for the Company's legitimate corporate purposes" was not withdrawn.

Second, The charters of the Company referred to show that, on the first day of January, 1863, this real estate was not liable to taxation. On the first of January, 1863, by section 4751 of the Code, which went into operation on that day, it was enacted that the Appellant "shall have no power to tax any of the lands or other property within said defined limits," (said limits being defined in section 4751), "except where the plan of the City is now, or shall hereafter be regularly and bona fide extended over such limits."

"All ordinances, by-laws, rules and regulations of said City, published by authority of said Mayor and Aldermen * * shall

be evidence in all Courts of this State to the same extent that laws of the State as published by authority shall be evidence of such laws." * * *

Code of Ga., 1873, § 4872.

By an examination of these various ordinances, rules and regulations it will appear that the real estate of the Atlantic and Gulf Railroad Company in 1876, 1877 and 1878 consisted of its depot grounds, embracing a solid body of acres; and that the plan of the city had been extended to its northern and western boundary, that is, that Liberty Street bounded the property on the north and East Broad Street on the west, but that on the south and east there were no streets extended by the City, and that no streets or lanes had been opened through the property. In other words, the plan of the City had been regularly and bona fide extended up to the northern and western boundaries of this real estate and no farther.

To enable the City to regularly and bona fide extend its plan over this real estate, it will be necessary to exercise its powers of eminent domain conferred by § 4849 of the Code by which is given "power and authority to widen, extend or straighten any street, lane, way or square in said City, and to open, lay out and establish any new street, lane, way or square within the limits of said City." * * * "But whenever said Mayor and Aldermen shall exercise the power to widen, extend or straighten a street, lane, way or square, or to open, lay out and establish any new street, lane, way or square, to the injury of private right, they shall appoint five freeholders, who shall assess the damages sustained, or the benefits or advantages derived by the owner or owners of the lot or lots fronting on said streets, lanes, ways or squares so widened, extended, straightened, opened, laid out or established, with power and authority to said Mayor and Aldermen to enforce the award or decision; but the owner or owners of land affected by such decision shall have the right to appeal therefrom to a special jury in the Superior Court of Chatham County, whose verdict in the premises shall be conclusive."

This section construed in The Mayor and Aldermen *vs.* Hartridge, 37 Ga., p. 113.

The policy of the State appears to have been to make taxation the price for benefits conferred and protection extended.

When the municipal authorities shall have paid for the streets and lanes, and shall have regularly and bona fide opened them and extended the plan of the city over the property, have laid down her gas and water mains through the streets and lanes, stationed her policemen there and brought the land within the jurisdiction of her scavenger department, then, but not till then, can they impose a tax.

In the case of the Mayor and Aldermen of Savannah *vs.* La Roche, 55 Georgia Reports, pp. 309, 310, the Supreme Court of the State uses this language: "The power of taxation vested in the city authorities of Savannah is conferred by the Acts of 1787, 1805, 1825 and 1838 (construed in 8th Georgia Reports, p. 23) and the